

EMPLOYMENT APPEALS TRIBUNAL

Claims of:
Employee

Case No.
UD460/2007
WT137/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr J. Browne
Ms. E. Brezina

heard this claim at Wexford on 4th June 2008

Representation:

Claimant: Mr. Michael Binchy B.L. instructed by Ms. Melody Revington,
Tiernan & Co., Solicitors, 144 Lower Baggot Street, Dublin 2

Respondent: Mr. Brendan McCarthy, 36 Deerpark Road, Mount Merrion, Co. Dublin

The determination of the Tribunal was as follows:

The above claims were heard simultaneously with claims UD459/2007 & WT136/2007

Preliminary Issue:

At the outset of the hearing the Tribunal heard an application for an extension of the stipulated six-month time limit as the claim was lodged to the Tribunal outside of this time. The Tribunal heard evidence from the claimant in relation to this matter. His T1A form was lodged to the Tribunal on the 30 April 2007.

The claimant terminated his employment by fax from the UK on the 12 May 2006. He attempted around this time to engage representation but he was unsuccessful. After approximately four months he contacted a Polish-speaking solicitor through an advertisement in a newspaper. The solicitor was employed with a firm of solicitors. The claimant and two colleagues attended a

meeting with the solicitor on Saturday, 4 November 2006. The meeting lasted three hours and the claimant provided the solicitor with documents relating to his employment. He also showed the solicitor a copy of a complaint he had made to the respondent. This related to various times that the claimant was paid incorrectly. The solicitor told them he would prepare documents on their behalf to the Tribunal. The claimant and his colleagues each paid the solicitor a sum of money. The claimant contacted the solicitor a number of times after this and was reassured that the forms were lodged to the Tribunal. Subsequently, the claimant signed and dated his T1A form on the 25 April 2007 and his claims were lodged to the Tribunal on the 30 April 2007.

During cross-examination the claimant stated that he was informed in November 2006 by the solicitor that there was a six-month time limit for claims to the Tribunal.

The Tribunal heard that the solicitor engaged by the claimant was subsequently dismissed from his employment.

Determination on Preliminary Issue:

Having heard the submissions regarding the claimant it was the unanimous view of the Tribunal that such circumstances existed to allow the Tribunal to apply its discretion and extend the time limit for the lodgement of claims from six months to twelve months as set out under Section 7(2)(b) of the Amendment Act.

Claimant's Case:

The claimant's case was that he was constructively dismissed. He gave evidence that he signed his employment contract on the 12 March 2005 but was working with the respondent from January 2005. He worked as an international lorry driver for the respondent. He worked fifteen hours per day, which consisted of nine hours driving and six hours of other work. The company put pressure on him to complete loads in faster times. He often worked twenty-four hours per day and his only break was when he was on a ferry. The claimant submitted his resignation by fax to the respondent from the UK on the 12 May 2006. The claimant resigned because of the pressures put on him and also because he had difficulties receiving payments due to him. The claimant reported these difficulties to Ms. K in the office through a verbal complaint and he prepared documents for her concerning payslips etcetera. He provided her with a number of dates he had not been paid and he also spoke to the boss of the company about it. Details of his complaint were submitted to the Tribunal. The claimant complained a number of times about this matter and he also raised it with a colleague in the office. He raised it with the boss approximately every three weeks. The claimant was paid €66.00 per day for days when he worked 24 hours. It was his understanding that according to his contract he was to be paid an overnight rate and a subsistence rate but he had difficulty getting these payments.

The claimant complained to Mr. S, the boss of the company and he showed Mr. S a copy of his complaint. Mr. S asked the claimant why he should pay him for only three hours work. The claimant understood his contract to state that he was entitled to an overnight and a meal rate. The claimant stated that he worked more than fifteen hours per day, almost every third day.

The claimant decided to seek other work at the beginning of 2006 but did not tender his resignation immediately due to financial commitments in Poland and he wanted to secure new employment

first. The claimant succeeded in obtaining new employment during his notice period.

The claimant tendered his resignation on Friday, 12 May 2006 by fax from the UK. On Monday, 15 May 2006 he returned to the respondent's yard. Mr. S enquired why the claimant was tendering his resignation and the claimant told him it was because of the problems he had with his payments.

During cross-examination it was put to the claimant that it was normal for an international driver to be working at different locations outside of Ireland. The claimant agreed it was normal but stated that usually a driver is paid an overnight rate. The claimant did not make another written complaint to the respondent other than the information he provided about payments.

The claimant accepted that he was responsible for ensuring that he had breaks but when he reported that he was taking a break, he was told it was necessary for him to keep driving.

It was put to the claimant that he had breached tachograph rules a number of times. The claimant accepted this but said he did this when his lorry was carrying an urgent load.

The claimant did not recall receiving a letter dated 6 June 2006 from the respondent company offering him an opportunity to re-think his decision to resign.

Respondent's Case:

Ms. N gave evidence that the company employs 500 drivers. It is the nature of international driving that the driver could be away for a number of weeks or months at a time. The company tells the drivers that there is an onus on them to manage their tachographs. The company completes 300 loads per day. When a driver's lorry is empty he telephones the office for the next order. If a driver cannot carry out the task in time the load is not given to him. If the first driver does not suit the next driver gets the load. The company also has the option of putting a second driver in a lorry in order to double the driving hours.

In relation to the claimant Ms. N stated that it is impossible for anyone to work 24 hours per day. Ms. N was unaware of any problems the claimant had with his working hours. Every lorry has a GPS system installed since 2006 and each driver keeps the same lorry. GPS records were submitted to the Tribunal. Each driver in the company keeps their own lorry. Ms. N stated that the company allows each driver a generous unloading time of 30 minutes. The loads consist of pallets so 30 minutes is a generous amount of time to allow for unloading.

During cross-examination it was put to Ms. N that the company did not address the claimant's difficulty with his wages. Ms. N replied that Ms. K, whom the claimant had spoken to, does not have responsibility for wages.

The company does not pay for three hours work. An employee is paid for either a half-day or a full day. Ms. N disagreed that the claimant had ever worked 24 hours. It was put to Ms. N about the claimant's daily rate of pay being €66.00 per day. Ms. N replied that the claimant signed his contract, which had set out these rates of pay. Ms. N stated that anything owed to the claimant was paid to him the following week.

Determination:

The Tribunal carefully considered the evidence of both parties. From the evidence furnished the Tribunal is of the view that in all the circumstances the claimant has discharged the onus of proof required by the Act for claims under this Section and awards the claimant the sum of €1,327.00 under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Organisation of Working Time Act, 1997 was withdrawn during the course the hearing.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)